

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 587/JP/2017
निर्धारण वर्ष/Assessment Year : 2008-09

Smt. Krishana Soni C/o Triputi Automobiles, NH-8,Kotputli, Distt. Jaipur.	बनाम Vs.	Income Tax officer, Ward Behror, Behror 301 701 Distt. Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIDPS1888D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : None
राजस्व की ओर से/ Revenue by : Shri P.P. Meena (J.CIT)

सुनवाई की तारीख/ Date of Hearing : 03/11/2017
उदघोषणा की तारीख/Date of Pronouncement: 10/11/2017

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 08.06.2017 of CIT (A), Alwar arising from the penalty order passed u/s 271(1)(c) of the Act for A.Y. 2008-09. The assessee has raised the following grounds as under:-

- "1. The learned AO has erred in imposing the penalty of Rs. 20000/- under section 271(1)(c) on ad hoc or lump sum addition made on estimate basis and CIT (Appeal) has erred in confirming the same.*
- 2. Any other ground of appeal at the time hearing."*

2. At the time of hearing none has appeared on behalf of the assessee however, Mr. Anil Goyal (C.A.) the Id. Authorized Representative of the assessee filed a letter dated 27.10.2017 and pleaded that this appeal of the assessee may be decided by considering written submissions filed on behalf of the assessee on 28.08.2017. Thus this appeal of the assessee is taken up for hearing and adjudication.

3. We have carefully perused and given our thought to the written submissions of the assessee as well as the contentions of the Id. DR. The assessee is engaged in the business of plying of trucks. The assessee declared her income from the business of plying trucks under the provisions of section 44AE. While framing the assessment the Assessing Officer made disallowance of Rs. 64,675/- on account of depreciation of car claimed by the assessee. The addition was confirmed by the CIT(A) and thereafter the AO initiated the penalty proceedings u/s 271(1)(c) against the addition on account of disallowance of depreciation on car. Thus the issue of disallowance of depreciation, in the facts of the case when the assessee has declared the income under deeming of provisions of section 44AE, has attained the finality. The Assessing Officer imposed levy of penalty of Rs. 20,000/- u/s 271(1)(c) vide order dated 25.03.2015 which was

challenged by the assessee before the Id. CIT(A) however, the Id. CIT(A) was not impressed with the contention and explanation of the assessee and confirmed the levy of penalty.

4. Before the Tribunal the assessee has submitted that there is no restriction to claim the depreciation of any asset which is being used in the business of plying trucks u/s 44AE. Therefore, in the absence of any specific restriction of allowing the depreciation on the asset other than the plying trucks the claim of the assessee though, disallowance made by the assessee and confirmed by the CIT(A) cannot be treated as bogus leading to the default of either concealment of income or furnishing inaccurate particulars of income. Further, it is contended that it may be a difference of opinion on a debatable issue and merely because the Assessing Officer made an addition on the basis of material available on record it will not amount to furnishing inaccurate particulars of income or concealment of income. When the assessee explained and furnished all the relevant details and documents before the AO during the assessment proceedings then the addition made by the AO would not warrant levy of penalty u/s 271(1)(c). The assessee has placed reliance on various decisions including the decision of

Hon'ble Supreme Court in case of CIT Vs. Reliance Petro Products Pvt. Ltd. 322 ITR 158.

5. On the other hands, the Id. DR has submitted that the assessee claimed depreciation on car which is not permissible as per the provisions of the Act when the assessee declared the income from business u/s 44AE from the business of plying trucks. He has further contended that during the assessment proceedings the AO noted that the assessee has claimed depreciation on car which was wrongly credited in the capital account of the assessee in M/s Triputi Cottage whereas the said amount was sub sumed in calculating the income u/s 44AE. He has relied upon the orders of the authorities below.

6. Having considered the rival submissions as well as relevant material on record, we note that as far as the income declared u/s 44AE is concerned the Assessing Officer has accepted the same. However, the AO disallowed the claim of the assessee on account of depreciation on cars. Though disallowance made by the AO was confirmed by the Id. CIT(A) and attained finality, however, when the assessee has produced the all relevant record, details as well as facts before the Assessing Officer and only from the record produced by the assessee the AO noted that the assessee has claimed the depreciation of Rs. 64,675/-

which was also credited to the capital account of the assessee. Thus, the disallowance made by the AO is based on the ground that the said claim is not permissible when the assessee has declared income u/s 44AE. There is no quarrel on the point that as per sub-section 3 of section 44AE no deduction is allowable u/s 30 to 38 as the same is deemed to have been already given full effect while computing the income as per provisions of section 44AE(1). However the disallowance of the claim as per the statutory provision would not amount that the assessee has furnished inaccurate particulars of income or concealment of income when all the details and relevant material available before the AO as produced by the assessee. Therefore, in view of the decision of Hon'ble Supreme Court in case of CIT vs. Reliance Petro Products Pvt. Ltd. (Supra) which is binding precedent we are of the view that the penalty cannot be levied simply because of the addition made by the AO as it was not allowable under the provisions of section 44AE. It is not the case of the AO that the depreciation claimed by the assessee is a bogus claim on non existing business asset or otherwise absolutely wrong. Therefore, in the facts and circumstances of the case we delete the penalty of Rs. 20,000/- levied u/s 271(1)(c) of the Act.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 10/11/2017

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 10/11/2017.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Smt. Krishana Soni C/o Triputi Automobiles, NH-8, Kotputli, Distt. Jaipur.
2. प्रत्यर्थी / The Respondent- Income Tax officer, Ward Behror, Behror 301 701 Distt. Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 587/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar